

**TRADE AND COMMERCE: HORSE RACING AND PARI-MUTUEL  
WAGERING.**

**No requirement that licensed racetrack be in existence and operating before licensee may open satellite facility to transmit simulcast horse racing. Virginia Racing Commission has sole authority to promulgate regulations and conditions for operation of racetrack and satellite facility in Commonwealth; is appropriate state agency to determine whether construction of racetrack must be completed before satellite facility may be opened.**

The Honorable Robert G. Marshall  
Member, House of Delegates  
February 11, 2000

You ask whether Colonial Downs Holdings, Inc., or the Virginia Turf Club, Inc., may open an "off-track betting parlor" for wagering on simulcast horse racing transmitted from locations outside the Commonwealth before construction is completed of a racetrack to conduct live racing. You ask whether such would constitute a satellite betting facility that would require voter approval in a separate referendum. I can find no statutory definition of the term "off-track betting parlor." For the purposes of this opinion, therefore, I shall refer to the term "satellite facility" as that term is defined in § 59.1-365 of the *Code of Virginia*. You advise that, in 1994, the voters in Prince William County approved a referendum to permit pari-mutuel wagering in the county at a licensed racetrack in accordance with Chapter 29 of Title 59.1, §§ 59.1-364 through 59.1-405 ("Chapter 29").<sup>1</sup>

The statutory provisions governing horse racing and pari-mutuel wagering in the Commonwealth are contained in Chapter 29. Section 59.1-365 defines terms that are used in Chapter 29. The term "simulcast horse racing" is defined as

the simultaneous transmission of the audio or video portion, or both, of horse races from a licensed horse racetrack or satellite facility<sup>[2]</sup> to another licensed horse racetrack or satellite facility, regardless of state of licensure, whether such races originate within the Commonwealth or any other jurisdiction, by satellite communication devices, television cables, telephone lines, or any other means for the purposes of conducting pari-mutuel wagering.<sup>[3]</sup>

The definition of "simulcast horse racing" clearly permits the receipt by a "licensed horse racetrack or satellite facility" of the audio and/or video transmission of horse races.<sup>4</sup>

The power to control and regulate horse racing with pari-mutuel wagering in Virginia is vested in the Virginia Racing Commission.<sup>5</sup> The Commission has "all powers and duties necessary to carry out the provisions of [Chapter 29] and to exercise the control of horse racing as set forth in § 59.1-364."<sup>6</sup> "If the language of a statute is plain and unambiguous,

and its meaning perfectly clear and definite, effect must be given to it."<sup>7</sup> It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.<sup>8</sup> In those situations, the statute's plain meaning and intent govern.

Section 59.1-369(4) provides the only limitation placed on the Commission relating to licensure:

The Commission shall promulgate regulations and conditions under which simulcast horse racing shall be conducted at a licensed horse racetrack or satellite facility in the Commonwealth and all such other regulations it deems necessary and appropriate to effect the purposes of [Chapter 29]. Such regulations shall include provisions that all simulcast horse racing must comply with the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.) and shall require the holder of an unlimited license to schedule not less than 150 live racing days in the Commonwealth each calendar year; however, the Commission shall have the authority to alter the required number of live racing days during the first five years of operation based on what the Commission deems to be in the best interest of the Virginia horse industry. Such regulations shall authorize up to six satellite facilities and restrict majority ownership of satellite facilities to an entity licensed by the Commission which owns a horse racetrack in the Commonwealth. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any satellite facility. *Wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility.* [Emphasis added.]

"[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."<sup>9</sup> Statutes should not be construed to frustrate their purpose.<sup>10</sup> In addition, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.<sup>11</sup> Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>12</sup>

The plain language of § 59.1-369(4) requires the Commission to adopt regulations authorizing a licensee<sup>13</sup> to own or operate "up to six satellite facilities." The plain language does not require that a racetrack be in existence and operating in order for a satellite facility to offer simulcast horse racing. Consequently, I am required to conclude that should the Virginia Racing Commission issue a license to operate a racetrack and a satellite facility, the clear definition of the term "simulcast horse racing" would permit the licensee to operate a daily satellite facility.

A fundamental principle of statutory construction is that the clear and unambiguous words of a statute must be accorded their plain meaning.<sup>14</sup> "In determining legislative intent from the statutory language, words should be given their ordinary meaning."<sup>15</sup> Indeed, words in a statute are to be given their common meaning unless a contrary legislative intent is manifest.<sup>16</sup> The Commission, therefore, has clearly been given the

sole authority to promulgate regulations and conditions for the operation of a racetrack and a satellite facility in the Commonwealth.<sup>17</sup>

For many years, in rendering official opinions pursuant to § 2.1-118, the Attorney General has declined to render such opinions when the request (1) does not involve a question of law, (2) requires the interpretation of a matter reserved to another entity, (3) involves a matter currently in litigation, or (4) involves a matter of purely local concern or procedure.<sup>18</sup> The Commission is the agency in the Commonwealth authorized to determine whether construction of a racetrack must be completed before a satellite facility may be operated.

Because § 59.1-365 provides no definition of the term "off-track betting parlor," I have referred to such facility in this opinion according to the definition provided for "satellite facility."<sup>19</sup> Under the definition of the term "simulcast horse racing," I note that the audio and/or visual transmission of horse races may be received at either "another licensed horse racetrack or satellite facility."<sup>20</sup> I also note that the General Assembly does not require that a licensed horse racetrack be operating before a satellite facility may be opened.

<sup>1</sup>You report that the results of the votes on the question of pari-mutuel wagering were 32,333 to 22,254.

<sup>2</sup>"*'Satellite facility'* means all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering, and any additional areas designated by the [Virginia Racing] Commission." Section 59.1-365.

<sup>3</sup>Section 59.1-365.

<sup>4</sup>*Id.* (emphasis added).

<sup>5</sup>*See* § 59.1-364(A).

<sup>6</sup>Section 59.1-369.

<sup>7</sup>*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); *see also* Op. Va. Att'y Gen.: 1998 at 38, 40-41; 1993 at 256, 257.

<sup>8</sup>*See Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); *see also* Op. Va. Att'y Gen.: 1998 at 3, 5; 1993 at 99, 100.

<sup>9</sup>*Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

<sup>10</sup>*See* 1982-1983 Op. Va. Att'y Gen. 309, 311 (illogical result frustrates purpose of statute).

<sup>11</sup>See *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); *see also* *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att’y Gen.: 1998 at 56, 58; 1996 at 178, 178; 1991 at 238, 240; 1989 at 250, 251-52; 1985-1986 at 133, 134.

<sup>12</sup>See 2A Norman J. Singer, *Sutherland Statutory Construction* § 47.23 (5<sup>th</sup> ed. 1992 & Supp. 1999); Op. Va. Att’y Gen.: 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10.

<sup>13</sup>"‘*Licensee*’ includes any person holding an owner’s, operator’s or limited license under §§ 59.1-375 through 59.1-386 of [Chapter 29]. The licensee under a limited license shall not be deemed an owner for the purposes of owning or operating a satellite facility." Section 59.1-365.

<sup>14</sup>See *Diggs v. Commonwealth*, 6 Va. App. 300, 302, 369 S.E.2d 199, 200 (1988).

<sup>15</sup>*Albemarle County v. Marshall, Clerk*, 215 Va. 756, 761, 214 S.E.2d 146, 150 (1975).

<sup>16</sup>1997 Op. Va. Att’y Gen. 84, 86.

<sup>17</sup>See, e.g., §§ 59.1-364(A), 59.1-369(4).

<sup>18</sup>See Op. Va. Att’y Gen.: 1997 at 10, 12; 1987-1988 at 69, 72; 1977-1978 at 31.

<sup>19</sup>See *supra* note 2.

<sup>20</sup>Section 59.1-365.